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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/458,280      | 12/10/1999  | RICHARD C. VOGEL     | VAC.331.1           | 8678             |

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EXAMINER

DEMILLE, DANTON D

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

VAC.331A.03

DOCKETED

FOR: Office Action  
Response due 6-3-03

DOCKETED BY: S

**Office Action Summary**

Application No.

09/458,280

Applicant(s)

VOGEL ET AL.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 20 December 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                    6) Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. **Claims 1-5, 10-13, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs et al. in view of Thorn et al. and Scarberry et al.**
2. Jacobs teaches a foot wrap having an inflatable bladder for applying compressive force over the lower leg and foot of a patient. Jacobs also teaches that the foot wrap can be used in combination with a wound dressing column 6, lines 4-7. Clearly the inflatable bladder of Jacobs is capable of overlapping at least a portion of the wound dressing since it is taught that the releasable securing means allows the patient to take the device off to access the wound dressing. Thorn teaches a conventional wound dressing for introducing negative pressure over any area of the patient. Thorn uses a porous material as the first layer 7 and uses felt as an example material. There is no unobviousness to use any other equivalent porous material as an obvious equivalent alternative. Felt is not the only material that can be used. Scarberry teaches a wrap system that also applies a vacuum to a portion of the body and uses open celled foam as the first layer. Clearly open celled foam is an obvious equivalent alternative material to the felt of Thorn. It would have been obvious to one of ordinary skill in the art to modify Jacobs to use the foot wrap in combination with a wound dressing as taught by Thorn in order to complement the teaching of Jacobs and use open celled foam as taught by Scarberry as an obvious equivalent alternative material to the felt of Thorn to maintain the vacuum pressure over the wound. The free and open arrangement of the Jacobs wrap allows free placement of the wound dressing anywhere desired or required. Regarding claim 13, Thorn teaches a layer 7 of porous material. The porous material can be of any well known design as long as it maintains the space between the skin and

the second layer 8. Open celled elastic foam is just such a conventional material and an obvious provision.

3. **Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tumey et al. in view of Thorn, Scarberry et al. and Jacobs et al.** Tumey teaches a foot wrap having an inflatable bladder for applying a compressive force to the patient's foot. Jacobs teaches the convention of using wound dressings in combination with inflatable foot wraps and Thorn exemplifies wound dressings that apply a negative pressure. Scarberry teaches the open celled foam as an obvious equivalent alternative material for the felt of Thorn. It would have been obvious to one of ordinary skill in the art to modify Tumey to include a wound dressing with the wrap as taught by Jacobs to be able to additionally treat wounds and to use the specific type of wound dressing as taught by Thorn as an obvious example of wound dressings with open celled foam as the first layer spacing material as taught by Scarberry as an obvious equivalent alternative. Tumey additionally teaches the convention of pressure sensors 47 to control pressurization. Tumey teaches the pressure source is intermittently operable. Thorn teaches the vacuum source can be operable to vary the negative pressure in a preprogrammed manor to provide the desired effect. The art teaches intermittent pressure application therefore providing intermittent negative pressure would have been obvious to provide the desired therapeutic effect.

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